

## § 2422.32

without recourse to the record; however, the Authority may, in its discretion, examine the record in evaluating the application. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director.

(c) *Review.* The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:

- (1) The decision raises an issue for which there is an absence of precedent;
- (2) Established law or policy warrants reconsideration; or,
- (3) There is a genuine issue over whether the Regional Director has:
  - (i) Failed to apply established law;
  - (ii) Committed a prejudicial procedural error;
  - (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

(d) *Opposition.* A party may file with the Authority an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Regional Director and all other parties and a statement of service must be filed with the Authority.

(e) *Regional Director Decision and Order becomes the Authority's action.* A Decision and Order of a Regional Director becomes the action of the Authority when:

- (1) No application for review is filed with the Authority within sixty (60) days after the date of the Regional Director's Decision and Order; or
- (2) A timely application for review is filed with the Authority and the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days of the filing of the application; or
- (3) The Authority denies an application for review of the Regional Director's Decision and Order.

(f) *Authority grant of review and stay.* The Authority may rule on the issue(s)

## 5 CFR Ch. XIV (1–1–04 Edition)

in an application for review in its order granting the application for review. Neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority.

(g) *Briefs if review is granted.* If the Authority does not rule on the issue(s) in the application for review in its order granting review, the Authority may, in its discretion, afford the parties an opportunity to file briefs. The briefs will be limited to the issue(s) referenced in the Authority's order granting review.

## § 2422.32 Certifications and revocations.

(a) *Certifications.* The Regional Director will issue an appropriate certification when:

- (1) After an election, runoff, or rerun,
  - (i) No objections are filed or challenged ballots are not determinative, or
  - (ii) Objections and determinative challenged ballots are decided and resolved; or

(2) The Regional Director issues a Decision and Order requiring a certification and the Decision and Order becomes the action of the Authority under § 2422.31(e) or the Authority otherwise directs the issuance of a certification.

(b) *Revocations.* Without prejudice to any rights and obligations which may exist under the Statute, the Regional Director will revoke a recognition or certification, as appropriate, and provide a written statement of reasons when:

- (1) An incumbent exclusive representative files, during a representation proceeding, a disclaimer of any representational interest in the unit; or
- (2) Due to a substantial change in the character and scope of the unit, the unit is no longer appropriate and an election is not warranted.

## § 2422.33 Relief obtainable under part 2423.

Remedial relief that was or could have been obtained as a result of a motion, objection, or challenge filed or raised under this subpart, may not be

## Federal Labor Relations Authority

## § 2423.0

the basis for similar relief if filed or raised as an unfair labor practice under part 2423 of this chapter: *Provided, however*, that related matters may be consolidated for hearing as noted in § 2422.27(d) of this subpart.

### § 2422.34 Rights and obligations during the pendency of representation proceedings.

(a) *Existing recognitions, agreements, and obligations under the Statute.* During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the Statute.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 3 U.S.C. 431(d)(2), 5 U.S.C. 7103(a)(2), and 7112(b) and (c): *Provided, however*, that its actions may be challenged, reviewed, and remedied where appropriate.

[60 FR 67291, Dec. 29, 1995, as amended at 63 FR 46158, Aug. 31, 1998]

## PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.

2423.0 Applicability of this part.

### Subpart A—Filing, Investigating, Resolving, and Acting on Charges

2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.

2423.2 Alternative Dispute Resolution (ADR) services.

2423.3 Who may file charges.

2423.4 Contents of the charge; supporting evidence and documents.

2423.5 [Reserved]

2423.6 Filing and service of copies.

2423.7 Alternative case processing procedure.

2423.8 Investigation of charges.

2423.9 Amendment of charges.

2423.10 Action by the Regional Director.

2423.11 Determination not to issue complaint; review of action by the Regional Director.

2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

2423.13–2423.19 [Reserved]

### Subpart B—Post Complaint, Prehearing Procedures

2423.20 Issuance and contents of the complaint; answer to the complaint; amendments; role of Office of the Administrative Law Judges.

2423.21 Motions procedure.

2423.22 Intervenors.

2423.23 Prehearing disclosure.

2423.24 Powers and duties of the Administrative Law Judge during prehearing proceedings.

2423.25 Post complaint, prehearing settlements.

2423.26 Stipulations of fact submissions.

2423.27 Summary judgment motions.

2423.28 Subpoenas.

2423.29 [Reserved]

### Subpart C—Hearing Procedures.

2423.30 General rules.

2423.31 Powers and duties of the Administrative Law Judge at the hearing.

2423.32 Burden of proof before the Administrative Law Judge.

2423.33 Posthearing briefs.

2423.34 Decision and record.

2423.35–2423.39 [Reserved]

### Subpart D—Post-Transmission and Exceptions to Authority Procedures

2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.

2423.41 Action by the Authority; compliance with Authority decisions and orders.

2423.42 Backpay proceedings.

2423.43–2423.49 [Reserved]

AUTHORITY: 3 U.S.C. 431; 5 U.S.C. 7134.

SOURCE: 62 FR 40916, July 31, 1997, unless otherwise noted.

### § 2423.0 Applicability of this part

This part is applicable to any charge of alleged unfair labor practices pending or filed with the Authority on or after January 1, 1999, and any complaint filed on or after October 1, 1997.

[63 FR 65642, Nov. 30, 1998]

### Subpart A—Filing, Investigating, Resolving, and Acting on Charges

SOURCE: 63 FR 65642, Nov. 30, 1998, unless otherwise noted.